

matter jurisdiction or a defect in the removal, 28 U.S.C. § 1447(d) does not preclude the Court of Appeals from reviewing that Order. See *Shives*, 151 F.3d 164; *In re Blackwater Security Consulting, LLC*, 460 F.3d 576 (4th Cir. 2006). Further, even if this Court finds that it cannot review the remand Order itself, Section 1447(d) does not prohibit review of the denial of the Motion to Dismiss if this Court determines that that ruling is a collateral decision that is severable from the remand Order. See *In re Blackwater Security Consulting, LLC*, 460 F.3d at 583; *City of Waco v. U.S. Fid. & Guar. Co.*, 293 U.S. 140, 143, 55 S.Ct. 6, 79 L.Ed. 244 (1934) (holding § 1447(d) not applicable to the portion of a remand order that dismissed a cross-claim because the dismissal "...in logic and in fact . . . preceded [the order] of remand and was made by the District Court while it had control of the cause . . . [A]nd, if not reversed or set aside, [the dismissal] is conclusive upon the petitioner").

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2013, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF filing system, which will then send a notification of such filing (NEF) to the following:

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